

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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UPPAC CASES

- The Utah State Board of Education reinstated Wally F. Cowan's educator license. Cowan's license had been suspended as a result of his possession of sexually-oriented videos, catalogs, and magazines in his classroom.
- The State Board accepted a Stipulated Agreement for a two year suspension of Darrin Curtis Revels' educator license. The suspension results from Revels viewing inappropriate and pornographic materials on his school computer during class time.

Fashionistas

Student dress codes have been the source of much angst to teen fashion gurus for years. But adult fashionistas can be equally trying for schools.

Dress codes for faculty are not as prevalent as those for students—the prevailing wisdom being that adults know to dress appropriately for work. But adults can disagree as vehemently as teenagers about what is appropriate dress in the workplace.

One source of contention is generational. Younger teachers may be more inclined to view flip-flops as work attire. Educators from an older generation may find these shoes are meant for gym shower rooms and the beach only.

The same can also be said for shorts in the classroom. Longer length shorts may be appropriate professional attire in the eyes of younger educators and absolutely inappropriate for others (though it must be said here and now, NO adult should wear those old fashioned tight, mid-thigh coach shorts from the 1970s. Please throw those things out now before someone gets hurt).

Educators may also have competing views about the workplace environment. For some teachers, school is their office and the

dress of all educators should reflect appropriate office attire. For others, a school is a school and educators can dress in casual attire more in line with their students than their peers in high rise office buildings.

But teachers who fall too far into the studentmode of dress can cross professional lines. A female teacher who wears very low cut shirts or a male with his jeans belted below his hips may be more of a distraction for students than the teenager who arrives at school with hot pink hair.

While some of the debate about dress may require negotiation between older and younger educators, every educator has a duty to maintain a welcoming, but professional atmosphere in the classroom. A teacher in shorts and flip-flops during these last warm days of school may find it more difficult to maintain the appropriate level of teacherstudent relationship than the educator who maintains a look appropriate for work, not for working in the yard.

I can also tell the story of the principal who became the subject of much teenage ridicule

after students got a glimpse of him in shorts. Even students know an administrator should not be at work in casual shorts.

Schools also need to be careful about falling too far on the office attire side of the equation. If a school adopts an educator dress code that requires all educators to buy a new, dry-clean only wardrobe, the educators may have a valid grievance against the school. Dress requirements for educators, like those for students, can not be so prescriptive that it is too expensive for the educator to work for the school.

Educator dress codes can also include restrictions on speech even more stringent than those that apply to students. Because educators are state actors in the school environment, a school can prohibit educators from using clothing or accessories to indoctrinate students to a political or religious point of view. While educators can wear religious garb, they cannot wear proselytizing t-shirts or political buttons, or similar items while teaching a captive audience of students.

And save the Polygamy Porter tee for your day off.

Eye On Legislation

While some believe the Utah Legislature is on hiatus for the summer, now is actually the time when ideas for new bills start percolating around Capitol Hill.

This summer, several ideas for public education will be discussed (only a fraction of the 190+ education bills we will see filed in December will be tested publicly during the summer, but it at least gives education organizations a heads up on a few ideas).

One idea we hope will prove unable to outlast the summer was recently reported in the news.

Rep. Carl Wimmer, R-Herriman, proposed a criminal penalty for educators who violate Utah law on sex education.

Rep. Wimmer may have just had a knee jerk reaction to parent complaints about a teacher who may have crossed some lines in her sex education instruction, but it seems there are far less Draconian means of dealing with such an error in judgment than imposing a criminal penalty.

One such possibility, depending on deed that is her intent. Until the the actual facts in the situation, item is discussed in the interim

may simply be to talk with the teacher and her principal to make sure she understands the legal requirements.

If the teacher intentionally violated the legal boundaries, a second op-

tion might be for the district to take disciplinary action and refer the teacher to the Utah Professional Practices Advisory Commission as well.

A second idea brewing on the Hill is less specific than Rep. Wimmer's criminal penalty scheme. Sen. Margaret Dayton, R-Orem, asked for an interim study of the PTA. What Sen. Dayton has in mind with her study is not yet clear. Given that

PTA is a private organization, it is equally unclear what legislative authority Sen. Dayton might think it can exercise over the PTA, if indeed that is her intent. Until the item is discussed in the interim meetings, the focus remains a mystery.

Legislators and the State Board of Education are also spending considerable time this summer on the issue of performance pay for educators. Both groups are interested in the idea of changing the teacher salary structure to reward those educators who use the best practices in their classrooms and achieve commensurate results.

One of the key issues to address, however, is how results are measured. Standardized test scores are an easy measuring stick, but perhaps not the most accurate. Overall student learning is more difficult to measure, but also more vital than a test score.

UPPAC Case of the Month

As the end of the school year approaches for most, students aren't the only ones getting into trouble at graduation.

Much like the students, some educators will drink when and where they shouldn't, give an inappropriate graduation or end of the year gift to a student, and perhaps say things they should never say, or give personal information to someone who doesn't want it.

The Utah Professional Practices Advisory Commission will address several of these types of educator misconduct cases over the next several months. Educators have or are currently facing an investigation for:

Giving multiple students expensive gifts at graduation.
 This action may violate State Board rules against giving

gifts that create an appearance of impropriety. Expensive gifts to select students may create the impression that the students are favored by the teacher, and may confuse the recipients about the teacher's motivation.

- Attending parties where students are drinking and not intervening or informing parents. Per state law, educators have a duty to inform parents when the educator witnesses a child engaged in criminal or potentially harmful conduct.
- Describing wild parties the educator attended to students. Students do not need to know, nor should they know, about an educator's private activities that involve conduct the student should not be encouraged

- to emulate. Educators should not discuss women dancing naked at a party or party goers becoming overly intoxicated unless, (and we have never seen this happen) the educator has written parental consent to do so.
- Giving middle school students the educators personal email, cell phone number, and/or home address to keep in touch while they are in high school. Students remain students until they graduate from high school. Educators are expected to maintain professional boundaries with all, even if the student has left the educator's class or school. Minors are minors and should never be considered an adult educator's "best friend."

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Recent Education Cases

Crenshaw v. Columbus City School Dist. (Ohio App. 2008). The court found that the school district's decision to fire a principal for failing to report a sexual assault was reasonable.

The principal was in a meeting about state testing when she was informed that a female student had been sexually assaulted and another student had videotaped part of the assault. The principal set a meeting on the issue for the following morning and continued with her discussions on state testing.

The principal left the school at 4:00p.m. without taking any further action regarding the sexual assault. The father had called the police, but no one was left in charge to talk to the police about the matter. The principal did not report the assault, despite a direct order from her supervisor to do so.

The board fired the principal and she appealed.

The court found the termination was justified given the principal's violation of the state abuse reporting law and her supervisor's direct order. The court noted that the father's phone call to the police did not relieve the principal of her duty to report the alleged abuse.

Lackow v. Dept. of Education (N.Y.

App. Div. 2008). The court upheld a biology teacher's termination for inappropriate comments to students.

The Dept. of Education investigated the teacher after a student yelled out "Lackow sucks" and Lackow responded, "No, you suck, well, that's what it says in the boys' bathroom."

The investigation revealed that Lackow made several inappropriate comments in his classes, including comments about bestiality, masturbation, and his own sexual prowess. Lackow had already been warned in writing on three prior occasions that his comments were inappropriate.

Lackow claimed that, since the warnings did not provide notice that he might be dismissed if he continued his comments, the penalty of dismissal was too harsh. The court disagreed, stating "Event without a warning about the possibility of dismissal, certain conduct, such as [Lackow's], is clearly unacceptable. Moreover, being admonished not to repeat prior behavior patterns was sufficient warning."

The court also stated "such conduct is indicative of a continued pattern of offensive behavior that reflect an inability to understand

the necessary separation between a teacher and his students."

Bronakowski v. Boulder Valley School Dist. (Dist. Colo. 2008). A school bus driver was not fired because of his polish ancestry, but because of his history of traffic violations while driving the bus, inappropriate and unsafe actions toward children, insubordination, and refusal to conform his behavior to prior warnings.

Parents and teachers complained about Bronakowski's physical activity with students, coming into classrooms and disrupting students. Bronakowski also received citations for running a red light, stopping on railroad tracks with a bus load of students, speeding in a school zone, and causing a 3-car accident.

The district gave Bronakowski several warnings, and placed him on an "Action Plan" to improve his job performance. While under the terms of the plan, Bronakowski continued to drive over the school zone speed limit, left the kids unattended while he asked a woman for directions—during which time the vehicle began to roll backward, among other issues.

Your Questions

Q: Currently, our students use ID badges to clock in. We have uncovered numerous instances of students clocking in for others and our students regularly lose the badges. Is there any law that would prevent us from using a fingerprint identification system?

A: Nothing in state or federal law would prohibit a school from using student fingerprints for identification purposes.

Like any other personally identifiable information, the fingerprints

What do you do when. . . ?

should not be shared with any third party, unless the disclosure is permitted under an exception to the federal Family Educational Rights and Privacy Act.

Q: A student has presented a prescription from Mexico and asked to be allowed to self-administer the medication. The medication has not been approved for use in the U.S. Must we administer or allow the child to administer this unapproved medication?

A: No. Utah law gives school permission to administer or allow self-administration of medication, but it does not REQUIRE administration. If the school has legitimate concerns about the identity of the prescribing medical professional or the legality of the drug to be administered, it can refuse to

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3) allow the student to administer

the drug or to have school personnel administer the medication.

Q: A religious organization has asked us to donate the high school cafeteria for an after-school hours fundraiser. Should we do this?

A: Maybe. The first question you need to answer is whether you have done or would do this for any other non-profit organization. If you have or would consider such a request in the future, then you can move on to the next question.

If you have not donated property before and would not do so for any other organization, then you probably should avoid set-

ting the precedent.

If you are willing to consider such donations, you should next ask yourself if you can justify this use of public tax resources. The school building, lights, air conditioning, and custodial, security, or other

staff costs are tax-payer funded. Will your taxed community support your decision to use public dollars as a donation to a particular organization.

And if so, will they be equally receptive to this use for any future groups who may

The answer depends on the school community. If the building is used as a community center and the district regularly allows outside groups to use the facilities free of charge, then there is little reason to deny the same access to yet another group.

request the same type of donation?

But if the school regularly charges a rental fee in some form, it should have clear policies in place establishing when those fees may be waived.

Those policies need to be well-reasoned and viewpoint neutral.

The policies should not focus on WHO is asking for the room, but what the effect of the use will be on the school—no one gets to use the cafeteria during the school lunch time, fees will not be

waived for large groups where school personnel may be called on to supervise, clean-up, assist, or otherwise be involved in the event to protect the school resources.

As with any school policy, consistent application is the key to avoid discrimination or other similar claims.

